

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LOUIS E. McBRIDE
Plaintiff,

CIVIL ACTION
NO: 05-11664-GAO

Vs.

WOODS HOLE, MARTHA'S VINEYARD &
NANTUCKET STEAMSHIP AUTHORITY and
LAFLEUR CRANE SERVICE, INC.
Defendants.

DEFENDANT, WOODS HOLE, MARTHA'S VINEYARD & NANTUCKET
STEAMSHIP AUTHORITY'S, MOTION FOR A PROTECTIVE ORDER

Now comes the defendant, Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, in the above-entitled action, by and through its undersigned attorneys, Clinton & Muzyka, P.C., and respectfully moves this Honorable Court pursuant to Rule 26(c) of the Federal Rules of Civil Procedure for a Protective Order concerning the production of the statements it obtained from the plaintiff and operator of defendant, LaFluer Crane Service, Inc.'s, vehicle until after their depositions are obtained.

As grounds in support of this motion, the defendant submits the following for the Court's consideration.

BACKGROUND

On June 24, 2004, the plaintiff was employed by the defendant, Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, as a Pilot onboard the M/V GAYHEAD,

which is owned and operated by said defendant. The plaintiff allegedly sustained personal injuries that day when he was struck from a vehicle being operated by Daniel Laprise, who at the time was employed by defendant LaFleur Crane Service, Inc. The plaintiff has instituted this action against his employer pursuant to the Jones Act, and has also asserted a negligence cause of action against LaFleur Crane Service, Inc.

Shortly after the accident and in anticipation of litigation, the defendant's underwriter engaged Marine Safety Consultants, Inc. to perform an investigation. On July 1, 2004, Marine Safety Consultants, Inc. obtained a tape-recorded statement from Daniel Laprise. On July 12, 2004, Marine Safety Consultants, Inc. obtained a tape-recorded statement from the plaintiff. Both statements, which subsequently have been transcribed, were obtained with permission and in absence of counsel for the parties including defense counsel.

On October 13, 2005, the plaintiff served Interrogatories and Requests for Production of Documents on the defendant. The plaintiff's written discovery requests the production of any and all statements obtained by the defendant. Although the time period for responding to the plaintiff's written discovery has not expired, the

defendant has filed this motion in advance to protect its rights.

ARGUMENT

It is the defendant's position that it should not have to produce the statements it obtained from the plaintiff and Mr. LaPrise until after their depositions are obtained.¹ It is well-settled that "[i]n appropriate cases the court may order a party to be deposed before his statement is produced because there is a legitimate interest in receiving a version which has not been tailored to conform to an earlier statement." *See, Willard v. Constellation Fishing Corp.*, 1991 A.M.C. 2999 (D.Mass. 1991); *F.R.Civ.P. Rule 26(c)*, *The Advisory Committee Notes (1970 Amendments)*. This legitimate interest is present in the case *sub judice*.

If the defendant is required to produce the statements before the depositions of the plaintiff and Mr. LaPrise, then it would be deprived of their unrefreshed recollection of the events that give rise to the accident, which is necessary in order for the defendant to properly evaluate their credibility. *See, Torres-Paulett v. Tradition Mariner, Inc.*, 157 F.R.D. 487, 489 (S.D.Cal.

¹ It should be noted that the witnesses' depositions have not even been scheduled at this time.

1994). Additionally, the defendant would be unable to obtain their depositions based upon their personal memory and knowledge, which is also necessary for the defendant to properly evaluate their credibility. *Id.*

The defendant has not only demonstrated good cause, but has demonstrated that its interests outweigh those of the parties. The defendant agrees to provide the deponents with copies of their statement following their depositions, which will provide the parties with ample opportunity to explain any inaccuracies or discrepancies contained in their deposition testimony through further discovery proceedings or at the time of trial. *Id.*; *McCoy v. General Motors Corp.*, 33 F.R.D. 354, 356 (W.D.Pa. 1963); *Nelson v. Puerto Rico Marine Management, Inc.*, 72 F.R.D. 637 (D.Md. 1976); *Smith v. China Merchants Steam Navigation Co., Ltd.*, 59 F.R.D. 178 (E.D.Pa. 1972); *Mills v. Energy Transportation Corp.*, 1996 WL 735556 (S.D.N.Y. 1996); *Palisi v. Jewelewicz*, 1997 WL 282218 (S.D.N.Y. 1997).

WHEREFORE, the defendant, Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, prays that this Honorable Court allow it to withhold the production of the aforementioned statements until the depositions of the plaintiff and Daniel LaPrise are obtained.

Respectfully submitted,

FOR THE DEFENDANT

"/s/Kenneth M. Chiarello"

Kenneth M. Chiarello

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